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PREVENTION **PROTECTION** **PROSECUTION** **CO-ORDINATED
POLICIES**

FIGHTING GENDER-BASED VIOLENCE IN THE EU

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Outline

Most important legal sources on fighting gender-based violence in the EU:

- Council of Europe Convention on preventing and combating violence against women and domestic violence („Istanbul Convention“)
- Directive (EU) 2024/1385 on combating violence against women and domestic violence
- Case-law of the European Court of Human Rights

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	Istanbul Convention (IC)	Directive (EU) 2024/1385 on VaW and DV
Entry into force	1 August 2014	14 June 2024
Binding on...	38 Council of Europe member states and EU, but not all EU member states (CZ, SVK, LIT, HUN, BLG have not ratified)	All EU member states
Goals	Provide parties with effective tools to prevent and combat violence against women and domestic violence	Establish common minimum standards on combating violence against women in the EU member states
Scope of application	Women and girls; some provisions: children	Women and all victims of domestic violence regardless of their sex
Supervision	Committee of the Parties (CoP) Expert committee GREVIO	European Commission
Reporting mechanism	Individual deadlines for reporting to GREVIO and CoP – recurring evaluation cycles	Implementation by 14 June 2027; thereafter reporting to EC
Sanctions for non-compliance	None – but political and societal pressure	Infringement proceedings

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The Istanbul Convention – main approaches and definitions

Recognises that gender equality is a key element in the prevention of violence against women, and that such violence is a manifestation of unequal power relations between women and men

Four pillars: Prevention – Protection – Prosecution – Integrated Policies

Violence Against Women: acts of gender-based violence that result in, or are likely to result in physical, sexual, psychological, economic harm

Domestic violence: acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former and current spouses or partners (*the IC only applies to women and girls victims of domestic/gender-based violence!*)

Gender: the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men

Gender-based violence: violence directed against women because they are women and that affects them disproportionately

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Directive (EU) 2024/1385 - definitions

Definitions (Article 2):

(a) 'violence against women' means all acts of gender-based violence directed against a woman or a girl because she is a woman or a girl or that affect women or girls disproportionately, that result in or are likely to result in physical, sexual, psychological or economic harm or suffering, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;

(b) 'domestic violence' means all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit, irrespective of biological or legal family ties, or between former or current spouses or partners, whether or not the offender shares or has shared a residence with the victim (*the Directive applies to all victims of domestic violence*!);

(c) 'victim' means any person, regardless of their gender, who has suffered harm directly caused by violence against women or domestic violence, including **children who have suffered harm because they have witnessed domestic violence**;

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Main chapters of the Istanbul Convention

- **Integrated policies** and data collection (Articles 7-11 IC)
- **Prevention** (Articles 12-17 IC):
 - "Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men." (Art. 12 § 1)
 - Training of professionals
 - Perpetrator programmes
- **Protection** (Articles 18-28 IC): Provide, for example, women's shelters, telephone hotlines, general and specialist support services, rape crisis centers, support for child witnesses, encourage reporting

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Main chapters of the Istanbul Convention

- **Civil and criminal law provisions** (Articles 29-48 IC)
- **Prosecution** (Articles 49-58 IC)
 - Effective investigation and prosecution; risk assessment and risk management, emergency barring and protection orders, etc.
 - See also the principles established by the Grand Chamber of the ECtHR in the case of *Kurt v. Austria* [GC], no. 62903/15, 15 June 2021
- **Asylum and migration** (Articles 59-61 IC)

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Istanbul Convention: Criminal law provisions (Articles 32-42 IC)

- For certain offences: *Ex officio* prosecution even if victim withdraws complaint! (Art. 55 § 1)
- Obligation to ensure that certain offences are punishable under national criminal law (Articles 33-39)
 - physical and psychological violence;
 - stalking;
 - sexual violence including rape;
 - forced marriage;
 - female genital mutilation;
 - forced abortion and forced sterilization
- Irrespective of relationship between victim and perpetrator (Article 43)
- Legal sanctions (civil or criminal) for sexual harassment (Article 40)
- So-called “honour” may never justify crimes! (Article 42)

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Main chapters of the Directive (EU) 2024/1385

- **Chapter 2 (Articles 3-13): Criminal law provisions** concerning the sexual exploitation of women and children and computer crime
- **Chapter 3 (Articles 14-24): Protection of victims and access to justice**
- **Chapter 4 (Articles 25-33): Victim support**
- **Chapter 5 (Articles 34-37): Prevention and early intervention**
- **Chapter 6 (Articles 38-44): Coordination and cooperation**
- **Chapter 7 (Articles 45-51): Reporting and final provisions** – review of Directive by 2032

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Directive (EU) 2024/1385 on combating violence against women (VaW) and domestic violence (DV)

Notable differences compared to Istanbul Convention:

- requires explicit criminalisation of cyber violence: the non-consensual sharing of intimate or manipulated material, cyber stalking, cyber harassment, cyber flashing and cyber incitement to violence or hatred
- female genital mutilation and forced marriage must be criminalised (same as IC)
- Directive does not contain any other criminal provisions on violence against women (criminal law = exclusive competence of member states, except for "Eurocrimes")
- some provisions go further than Istanbul Convention; some require less from member states
- result: states that are parties to IC and EU member states must ensure to meet the respectively higher standard (Article 48 of the Directive – Non-regression clause)

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Two selected areas of interest of the Istanbul Convention, the Directive (EU) 2024/1385 and the ECtHR's case-law

1) The approach to rape and sexual violence

2) Victims' rights in investigations and judicial proceedings

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Case-law of the European Court of Human Rights (ECtHR) on rape

M.C. v. Bulgaria,
no. 39272/98,
ECHR 2003 XII

- ❖ Bulgarian Criminal Code: force-based definition of rape; judicial practice interpreted lack of physical resistance as evidence tending towards consent
- ❖ ECtHR concluded that states' positive obligations under the Convention **'must be seen as requiring the penalisation and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance by the victim.'**
- ❖ "181. The Court considers that, while in practice it may sometimes be difficult to prove lack of consent in the absence of "direct" proof of rape, such as traces of violence or direct witnesses, the authorities must nevertheless explore all the facts and decide on the basis of an assessment of all the surrounding circumstances. **The investigation and its conclusions must be centred on the issue of non-consent.**"
- ❖ Positive duty on states to ensure the effectiveness of the criminal law through effective investigation and prosecution
- ❖ Violation of Articles 3 and 8 (procedural)

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The definition
of rape and
sexual
violence
(Art. 36
Istanbul
Convention)

Article 36 IC

1) Parties shall take the necessary **legislative or other measures** to ensure that the following **intentional conducts** are criminalised:

- a) engaging in **non-consensual** vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;
- b) engaging in other non-consensual acts of a sexual nature with a person;
- c) causing another person to engage in non-consensual acts of a sexual nature with a third person.

2) Consent must be given **voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances**.

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Approaches
to rape and
sexual
violence
under the EU
Directive
2024/1385

Lengthy negotiations during the drafting and the adoption process on whether the directive should criminalise non-consensual sexual acts

Draft foresaw the criminalisation of rape and sexual abuse of women and girls, based on the absence of consent

Several countries opposed, arguing that such conduct did not fall under Art 83(1) TFEU – „Eurocrimes“

Final version of the directive: no rape provision, but requirement to take specific measures to prevent rape and to promote the central role of consent in sexual relationships, *which must be given voluntarily as a result of the person's free will* (Article 35 of the Directive)

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Istanbul Convention:

Special measures of protection during investigation and judicial proceedings

- Ensure that evidence relating to sexual history and conduct of the victim shall be permitted only when relevant and necessary (Art. 54)
- Investigation/prosecution of most serious offences shall not be wholly dependent upon report filed by victim (Art. 55)
- Protection of victims and witnesses (Articles 56-58):
 - protect from intimidation and repeat victimisation;
 - inform of release or escape of perpetrator;
 - inform of progress of proceedings and their rights therein;
 - protect their privacy;
 - make sure that victims are heard;
 - enable them to testify without presence of perpetrator;
 - provide for free legal aid;
 - ensure adequate statute of limitation

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Directive (EU) 2024/1385

Victim protection measures

- **Article 21 – Guidelines for law enforcement and prosecutorial authorities**
- (e) treat victims in a **trauma-, gender-, disability- and child-sensitive manner** and ensure the child's right to be heard and the best interests of the child;
- (f) ensure that victims are treated in a respectful way and that proceedings are conducted in such a manner as to **prevent secondary or repeat victimisation**;
- (g) cater to the enhanced protection and all relevant support needs of victims experiencing **intersectional discrimination** as provided for in Article 33(1);
- (h) identify and **avoid gender stereotypes**;
- (j) refer victims to specialist support services, including medical services,
- (k) ensure that victims' privacy and confidential information are protected.
- See also **Directive 2012/29/EU** on the rights, support and protection of victims of crime ("**Victims' rights directive**")

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Recent ECtHR
case law:
[L and Others
v. France,
nos.
46949/21 et
al.](#)

- Three applications by victims of rape, minors at the time of the assaults (13, 14 and 16 years)
- Complaints under Articles 3 and 8 of the ECHR that French law did not provide effective protection against rape, and that their young age had not been taken into account
- Violation of Articles 3 and 8: insufficiency of the French criminal law system in the area of rape and sexual violence.
- Court referred to *M.C. v. Bulgaria* (2003), [M.G.C. v. Romania](#) (2016), [J.L. v. Italy](#) (2021) and [Vuckovic v. Croatia](#) (2023), underlined that the positive obligation to adopt criminal law provisions that effectively punish all non-consensual sexual acts had to be interpreted in the light of the Istanbul Convention.
- Rigid approach to the prosecution of sexual offences (e.g. requiring proof of physical resistance) risked leading to impunity for the perpetrators of certain types of rape - compromising the effective protection of the sexual autonomy of the individual. While the absence of consent was often taken into consideration in case-law of French courts, the French Criminal Code did not contain any express reference to “consent”

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Recent ECtHR
case law:
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- First applicant complained also under Article 14 ECHR of secondary victimisation, sexist stereotypes and victim-blaming attitudes by the authorities
- Violation - moralising and guilt-inducing statements by some public officials and judges towards her, which propagated gender stereotypes and were capable of impairing victims’ confidence in the justice system. Discrimination on the basis of her sex found
- Length of the proceedings in the first and third case: almost 12 years, and almost 9 years, respectively, demonstrating a lack of due care in the conduct of the criminal proceedings – violation of Article 8 ECHR

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Recent ECtHR case law:

E.A. and Association européenne contre les violences faites aux femmes au travail v. France (application no. 30556/22)

- Applicant alleged forced sexual relations and coercive control (“emprise”) by her superior at work
- Complaints under Articles 3 and 8 ECHR of lack of sufficient legal protection against non-consensual sexual acts in French statutes; a lack of effective investigation; of secondary victimization; and of impunity for the perpetrator
- Violations of Articles 3 and 8 – insufficient legal framework; lack of effective investigation; length of proceedings (8 ½ years)
- Secondary victimization: Court of Appeal Nancy held against the applicant that she had signed a “contrat maître-chienne” – thereby overlooking the fact that this was part of the coercive control by the accused against the applicant

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Pending cases against France concerning rape/sexual violence :

- **C.A. v. France**, application no [39690/22](#)
- **Spanton v. France**, application no [41585/22](#)
- **G.B. c. la France**, application no [8229/23](#)

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